

Michigan Outstate Seller of Wine Licensing Requirements and General Information

An **Outstate Seller of Wine (“OSSW”)** license:

- License issued to wine supplier by the Michigan Liquor Control Commission (“Commission”) to ship wine into Michigan and sell to Michigan wholesalers.
- Must be located in the United States (may be located in Michigan).
- Must be a holder of an Importer’s, Producer’s and/or Wholesaler’s Basic Permit issued by the Federal Bureau of Alcohol, Tobacco & Firearms (“BATF”).
- May sell and deliver **only** to Michigan wholesalers.
- No direct shipments allowed from OSSW to Michigan retailers or Michigan consumers.
- Must enter into territory agreements with their wholesalers.
- Responsible for registering all brands with the Commission.
- Responsible for payment of Michigan wine excise tax.
- \$300 annual license fee (licensing year is from May 1st to April 30th each year)
- \$1,000.00 continuous Surety Bond required.

An OSSW license may be issued to any of the following entities pursuant to Rule 436.1705 and the Liquor Control Code:

- **BOTTLER** - A person located outside of this state, but in the United States, who bottles wine manufactured by another person. This person shall have a certificate or affidavit of identity from the manufacturer.
- **BULK & SACRAMENTAL** - A person located outside of this state, but in the United States, who ships and sells bulk wine to licensed Michigan manufacturers for blending, rectifying, or non-beverage purposes or bottled wine directly to a minister, priest, or rabbi for sacramental purposes. Bulk wine shipments to Michigan manufacturers must have a release from the Commission prior to shipment into Michigan.
- **DOMESTIC** - A manufacturer located outside of this state, but in the United States, that produces and bottles its own wine.
- **EXCLUSIVE SALES AGENT** - A person located in the United States who is designated by the manufacturer of wine as its sole and exclusive sales agent in the United States.
- **IMPORT** - A person located in the United States who imports foreign wine and sells that foreign wine in this state. The actual importer must obtain the OSSW license.
- **PURCHASER** - A person located in the United States who purchases wine from a manufacturer of wine or brand owner located outside of this state, but in the United States, if the total amount of wine shipped into this state manufactured by that outstate manufacturer of wine or brand owner is 150,000 liters or less per calendar year. The OSSW licensee shall be responsible for the quality of wine shipped into and sold in this state. A person who obtains an OSSW license pursuant to this subdivision, or who imports wine pursuant to this subdivision, and holds a wholesale license shall pay cash at the time of purchase for importation.

How To Apply For An OSSW License:

All applicants for an Outstate Seller of Wine license must submit the following documents:

- LICENSE APPLICATION - Submit executed “Application for Michigan Non-Retail License” (Form LC/MW-100). Applicants whose facility will be located in Michigan must submit an executed “Application For New Licenses or Application of Buyers for Transfer of Ownership or Interest in License” (LC-687).
- BOND APPLICATION - Surety Bond (Form MW-816), executed by an insurance company in the amount of \$1,000.00 for the initial license. Subsequent year’s surety bond amount is the average monthly wine excise tax paid for the preceding calendar year, with a minimum of \$1,000.00. This bond is continuous and requires a 30-day written notice to the Commission if terminated.
- LICENSE FEE - \$300.00 license fee paid by certified check, bank draft or money order, payable to the State of Michigan. Licensing year is May 1st through April 30th; license fee may not be prorated; and must be renewed annually by May 1st.
- FEDERAL BASIC PERMIT (Issued by BATF, submit whichever Permit is applicable.)
 - *Importer of foreign wine* – “Importer’s Basic Permit”
 - *Shipping bulk wine for blending purposes* - “Wine Producer’s & Blender’s” Basic Permit
 - *Sacramental wine to churches* - “Wine Producer’s & Blender’s” Basic Permit or “Wholesaler’s” Basic Permit
 - *Bottler* - Certificate or affidavit of identity from the manufacturer and “Tax Paid Bottling” Basic Permit or “Bonded Winery” Basic Permit
 - *Domestic manufacturer* - “Wine Producer’s and Blender’s” Basic Permit
 - *Exclusive Sales Agent (Domestic Wines Only)* – “Wholesaler’s” Basic Permit for yourself; “Wine Producer’s and Blender’s” Basic Permit for each winery represented as an ESA; a list of brands to be sold in Michigan; and a letter from each winery represented as an ESA, stating that applicant is the exclusive sales agent in the U.S. for those specific brands
 - *Purchaser of wine (Domestic Wine Only)* - Copy of your “Wholesaler’s” Basic Permit; Copy of “Wine Producer’s and Blender’s” Basic Permit from each winery that manufactures the wine; a letter from the manufacturer stating who is the brand owner if the wine isn’t owned by the manufacturer. An OSSW licensed under the *Purchaser of Wine* rule is limited to shipping no more than 150,000 liters per calendar year from each manufacturer or brand owner. This section doesn’t apply to imported products.

In addition to the LC-100 and other documents required by all applicants, **CORPORATIONS** must submit the following information pursuant to Rule 436.1109:

- Copy of current, filed Articles of Incorporation.
- Current “Certificate of Good Standing” from the state where incorporated if incorporated outside of this state.
- “Report of Corporate Officers, Board of Directors & Stockholders” (Form LC-52).

In addition to the LC-100 and other documents required by all applicants, **LIMITED LIABILITY COMPANIES (“LLC”)** must submit the following information pursuant to Rule 436.1110:

- Copy of current, filed Articles of Organization.
- Current “Certificate of Good Standing” from the state where LLC is organized in.
- Copy of the Operating Agreement, by-laws, or agreements entered into by the members.
- “Report of Limited Liability Companies Members, Managers and Assignees” (Form LC-52A).

Send all applications to: Michigan Liquor Control Commission
Manufacturers & Wholesalers Section
P.O. Box 30005
Lansing, MI 48909
(517) 322-1415
www.michigan.gov/cis (Click on “Liquor Control”).

Licensing Process:

Upon submission of the required documents, the application will be submitted to the Commission at the earliest possible Licensing Meeting for review and consideration. The applicant is notified in writing of the Commission’s decision and provided with a copy of the Commission Order. If approved and the file is complete, the applicant will also be mailed the license at this time. If approved but additional documentation is required, the applicant will be advised of what steps need to be taken to complete the licensing process. If denied, the applicant will have the opportunity to an Appeal Hearing before the Commission.

License Fees:

Initial license fee for and annual renewal fee for an OSSW license is \$300.00. Licenses are renewed annually on May 1. The license fee may not be prorated for part-year licensure. License fee is payable upon MLCC approval of your application.

- MCL 436.1525

Manufacturing & Labeling:

Wine must be manufactured and labeled in accordance with federal wine regulations published in the Code of Federal Regulations (CFR), Title 27, Part 24. Wine must be labeled in accordance with the Code of Federal Regulations (CFR), Title 27, Part 4. Contact BATF for details.

- Rule 436.1707, Rule 436.1708

Label Registration:

All wine products sold in Michigan must have all labels approved by the Commission before the wine is sold in Michigan. The Commission may disapprove any label submitted for registration that is deemed to promote violence, racism, sexism, intemperance, or intoxication or to be detrimental to the health, safety, or welfare of the general public. To obtain Michigan approval, submit one copy of the Certificate of Label Approval (“COLA”) approved by BATF and one set of loose labels, if readily available. One copy of the COLA will be returned with the Michigan registration number stamped on it. For cider and wine containing less than 7% alcohol by volume, send in a set of loose labels only. There is no fee for Michigan label registration.

- Rule 436.1719

Mandatory Label Information (Pursuant to BATF Regulations):

- Brand name listed.
- Class, type or, in lieu of, a truthful and adequate statement of composition shall appear on the brand label of the product.
- Name and address of bottler or packer and place (city/state) where bottled. Name must be preceded by “Bottled by” or “Packed by”.
- Alcohol content must be listed. By definition, wine may contain ½ of 1% or more alcohol by volume but not more than 21% alcohol by volume. Table wine with alcoholic content of 11%-14% does not have to list the actual alcohol content. Listing “table wine” is adequate.
- Net contents.

Container Deposits:

Beer, mixed wine drink (wine coolers) & mixed spirit drink (spirit coolers) sold in containers of one (1) gallon or less must comply with the Beverage Container Act (The Initiated Law of 1976) by requiring a deposit of not less than 10 cents per container when sold to consumers. Containers must be clearly labeled with the name of this state and the deposit amount. “MI” or “MICH” are acceptable abbreviations for Michigan. The wholesaler who sells the returnable containers to their retail customers initiates the container deposit.

- MCL 445.571 – MCL 445.576

Wholesaler Sales Territories:

Section 307 of the Michigan Liquor Control Code of 1998, being MCL 436.1307, requires a wine manufacturer or an OSSW to grant a sales territory to each of its wholesalers within which the wholesaler shall be the distributor of the specified brand or brands of the manufacturer or OSSW. The sales territory is not determined by the Commission but is agreed upon by the wholesaler and the manufacturer or OSSW. More than one wholesaler may be granted the right to sell a specified brand or brands of wine in a given sales territory. The territory agreement should be in writing and the wholesaler must be provided with a copy of the agreement. Copies of territory agreements do not need to be filed with the Commission. With certain exceptions, a brand extension is not considered a new or different brand and must be assigned to the wholesaler that was granted the sales territory for the brand from which the brand extension resulted. Wholesalers are prohibited from selling to any retailer located outside of their sales territory.

While wine territories may overlap, the Liquor Control Code requires territory agreements for beer, mixed spirit drink (spirit coolers) and mixed wine drink (wine coolers) to be exclusive with no overlapping territories.

- MCL 436.1401, MCL 436.1403

Cash Sales:

All sales and purchases of alcoholic beverages shall be for cash only. Wholesalers are prohibited from offering credit terms to retail licensees. Payment by wholesalers must be made no later than when the wholesaler takes possession of the wine. Payment may be mailed to OSSW after shipment is verified. Payment may be made prior to shipment but is not mandatory. Payment may also be made by EFT no later than the next business day after receipt of shipment.

- MCL 436.2013

Michigan Wine Excise Tax Report:

The OSSW is responsible for paying the Michigan wine excise tax on all wine shipped and sold in Michigan. The “Michigan Wine Excise Tax Report” (LC-890) is due with payment of the appropriate tax amount in the Lansing office of the Commission, postmarked on or before the 15th of each month, for wine shipped into Michigan during the preceding calendar month.

- Wine 16% or less alcohol by volume - \$.135 per liter (13 & 1/2 cents per liter).
- Wine over 16% alcohol by volume - \$.20 per liter (20 cents per liter)

A copy of each corresponding invoice for wine shipments made during the preceding month must also be submitted along with the Michigan Wine Excise Tax Report. An OSSW must submit the Michigan Wine Tax Report monthly whether any wine shipments were made during the preceding month or not. (Indicate “no shipments” on the report.) There are no taxes due for Bulk or Sacramental Wine shipments. Sacramental wine licensees must submit a quarterly report of products shipped during that period. Bulk wine shipments must receive a Release from the Commission.

- MCL 436.1301, Rule 436.1725

Wine Invoices:

An OSSW must provide each wholesaler with two (2) copies of each invoice at the time of each sale and delivery of wine.

- Rule 436.1720

Delivery to Wholesaler Or Warehouser Only:

An OSSW may ship and deliver wine only to the licensed premises of a Michigan wholesaler or to the licensed premises of a Michigan warehouser. Wine may not be delivered from an OSSW to a Michigan retail licensee or a Michigan consumer.

- Rule 436.1719

Interest In Another License:

Michigan statute strictly prohibits an OSSW or any other supplier from holding any interest, directly or indirectly, in any other license. Examples of prohibited interests include: stock ownership in another license, leasing real estate to/from another licensee, interlocking officers or directors between licensees, financial interest in any manner of another licensee. An OSSW may hold multiple licenses for other OSSW locations if all licenses are issued in the same legal entity. A Michigan wholesaler may hold an OSSW license in the same legal entity. An OSSW may hold an Outstate Seller of Beer (“OSSB”) license or an Outstate Seller of Mixed Spirit Drink (“OSSMS”) license in the same legal entity as their OSSW license.

- MCL 436.1603

Salesperson License:

A person employed or representing an alcoholic beverage supplier or wholesaler who sells, delivers, promotes or otherwise assist in the sale, delivery or promotion of alcoholic liquor in the State of Michigan must obtain a Salesperson license from the Commission. Form LC/MW-843 must be executed and submitted to the Commission with a \$35.00 fee. Form LC/MW-843 is available from the Commission Website at: www.michigan.gov/cis (Click on “Liquor Control”).

- MCL 436.1853

Samples:

OSSW and wholesalers are allowed to sample their products with on-premises or off-premises retail licensees and the retailer's employees. Sample tastings may not be offered to consumers. All containers used to sample products with retailers must be marked with the word "Sample" with lettering at least ½-inches high. While suppliers and wholesalers may offer tasting samples from multiple beverages, only one (1) sample container of 750 ml size or smaller may be left with a retail licensee for sampling by the retailer and their staff. Again, the container must be marked "Sample". A sample container must be removed from the premises within 24 hours and again may not be sampled by consumers.

- Rule 436.1001, Rule 436.1421, Rule 436.1511, Rule 436.1513, Rule 436.1863

Price Posting:

OSSW are not required to post their prices to wholesalers with the Commission. Michigan wholesalers are required to post their prices to retailers with the Commission. Wine wholesalers must post their prices quarterly and must post prices for new products or price changes with the Commission. The wholesaler must maintain any temporary price reduction for no less than 14 consecutive calendar days.

- Rule 436.1726

Barrel Deposit:

OSSW shall collect a barrel deposit of \$10.00 for a barrel, ½ barrel, and ¼ barrel of wine or mixed wine drink. A \$10.00 cash refund must be made to a licensee who has made the deposit and returned the barrel for refund.

- Rule 436.1723a

Michigan Three-Tier Distribution System:

Michigan is a highly regulated three-tier distribution state. The Commission licenses and regulates alcoholic beverage suppliers, wholesalers and retailers. All alcoholic beverages sold to Michigan consumers must go through each of the licensed distribution tiers. Each of the distribution tiers operates independently of the others. An OSSW license is required to ship wine into Michigan and ***is authorized to ship/sell wine to licensed Michigan wholesalers only.*** The Michigan wholesaler is then authorized to ship/sell to the licensed Michigan retailer. The licensed Michigan retailer is the only entity authorized to sell and deliver alcoholic beverages to Michigan consumers. **Under no circumstances may an OSSW or any other out-of-state company ship alcoholic beverages directly to Michigan consumers.**

Rebates, Special Purchase Allowances, & Quantity Discounts:

An OSSW is prohibited from rebating any money to wholesalers. OSSW may offer special purchase allowances to wholesalers as long as the allowance is offered to all wholesalers and is based on the wholesaler purchases at the time of the allowance and not based on past sales. OSSW may offer quantity discounts to their wholesalers but may not offer free merchandise to their wholesalers.

- MCL 436.1609

Aid and Assistance:

Section 609 of the Code, being MCL 436.1609, and Rule 436.1035 prohibit an alcoholic beverage supplier or wholesaler from aiding or assisting any other licensee by giving them anything of value. Further, a licensee is prohibited from accepting aid and assistance from another industry member. Basically, alcoholic beverage suppliers are prohibited from giving anything of value to wholesalers or retailers. Likewise, wholesalers are prohibited from giving anything of value to retailers. This principle is intended to provide a level playing field for all industry members. Suppliers are prohibited from conducting incentive contests offering awards or prizes to wholesalers or their employees. Suppliers and wholesalers are prohibited from conducting incentive promotions offering awards or prizes to retailers or their employees. Suppliers may not give anything of value to their wholesalers or their employees. Suppliers and wholesalers are prohibited from giving anything of value to retail licensees, including but not limited to: alcoholic beverages, merchandise, furniture, fixtures, equipment, uniforms, cash or loans, labor, etc. While wholesalers and suppliers may provide point-of-sale materials such as posters, banners, table tents, flyers, etc., to retailers promoting their brands and prices, they are prohibited from providing anything that has any secondary use, value or purpose, other than actual advertising value to retailers without prior Commission approval. This same principle prohibits suppliers and wholesalers from providing free advertising, incentive programs, free or discounted product, draft system installation and maintenance, etc. Violations in the aid and assistance statute will result in all participants (retailer, wholesaler and supplier) being cited before the Commission.

- MCL 436.1609, Rule 436.1035

How to Contact BATF: www.atf.treas.gov

Federal Basic Permits:

BATF

Technical Services

550 Main St., Rm 6525

Cincinnati, OH 45202

(513) 684-3335

Federal Label Approvals:

BATF

Product Compliance Branch

650 Massachusetts Ave., N.W.

Washington, DC 20226

(202) 927-8140

Michigan Regional Office:

BATF

1155 Brewery Park Blvd.

Suite 300-A

Detroit, MI 48207-2602

(313) 393-0085

How To Contact The Michigan Liquor Control Commission:

Questions relating to Outstate Sellers of Wine or other non-retail licenses may be directed to:

Michigan Liquor Control Commission

Manufacturers & Wholesalers Section

7150 Harris Drive

P.O. Box 30005

Lansing, MI 48909-7505

Phone: (517) 322-1415

Fax: (517) 322-5046

E-mail: twhite@michigan.gov

www.michigan.gov/cis (Click on "Liquor Control" in left-hand column.)